

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 11, 2023**

**Hearing Room 301**

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9:30 AM

**1:**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

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**1: -**

**Chapter**

**#0.00 Unless other arrangements have been made in advance with the Court, all appearances for this calendar will be via Zoom and not via Court Call. [See Judge Kaufman's posted procedures titled "phone/video appearances" on the Court's webpage.]**  
**All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.**

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

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Meeting ID: 161 006 0591

Password: 210640

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**Chapter**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
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10:30 AM

**1:17-13190 Seferino Carlin**

**Chapter 13**

**#32.00** Trustee's Motion to Dismiss Case Due to Material Default of the Plan Pursuant to §1307(c)(6) Failure to Submit all Tax Returns and/or Tax Refunds

fr. 9/13/22; 11/15/22; 1/10/23; 3/14/23

Docket 71

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Seferino Carlin

Represented By  
Devin Sawdayi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:19-10613 Qadir Gilani Mohiuddin**

**Chapter 13**

**#33.00** Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 97

**\*\*\* VACATED \*\*\* REASON: Trustee filed a withdrawal dkt. #102 on  
6/15/23.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Qadir Gilani Mohiuddin

Represented By  
Michael E Clark  
Barry E Borowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:19-12223 Ana Maria Orantes**

**Chapter 13**

**#34.00** Motion to dismiss case for failure to make plan payments

Docket 36

**\*\*\* VACATED \*\*\* REASON: Motion withdrawn 6/20/23**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ana Maria Orantes

Represented By  
Steven A Alpert

**Movant(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:19-12961     Andre Robert Janian**

**Chapter 13**

**#35.00     Trustee's Motion to Dismiss Case for Failure to Make Plan Payments**

Docket     64

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Andre Robert Janian

Represented By  
Devin Sawdayi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:21-11971 Farooq Humayun Akhtar**

**Chapter 13**

**#36.00** Trustee's Motion to dismiss case for failure to make plan payments

fr. 3/14/23; 5/9/23

Docket 68

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Farooq Humayun Akhtar

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



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**1:22-10258    Gayane Khachatryan**

**Chapter 13**

**#37.00    Motion to Dismiss Case for Failure to Make  
Plan Payments**

Docket      46

**\*\*\* VACATED \*\*\*    REASON: Withdrawal of motion filed 6/21/23. [Dkt.  
52]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gayane Khachatryan

Represented By  
Sevan Gorginian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:22-10898     Mario Rene Tejada**

**Chapter 13**

**#38.00     Trustee's Motion to Dismiss Case for Failure to Make Plan Payments**

Docket     62

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Mario Rene Tejada

Represented By  
Nathan A Berneman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:23-10148     Asmik Lalafarian**

**Chapter 13**

**#39.00**     Trustee Motion for Order Dismissing Chapter 13 Proceeding  
due to Infeasibility of Plan

Docket     30

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Asmik Lalafarian

Represented By  
Rosie Barmakszian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:19-12728 Sally Hernandez**

**Chapter 13**

**#40.00** Trustee Motion to Dismiss Chapter 13 Case due to Material Default of the Plan Pursuant to §1307(c)(6) Failure to Submit All Tax Returns and/or Tax Refunds

fr. 11/15/22; 1/10/23; 3/14/23, 4/11/23; 5/9/23; 6/13/23

Docket 58

**\*\*\* VACATED \*\*\* REASON: Order withdrawing motion entered 6/14/23.  
[Dkt. 74]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Sally Hernandez

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:23-10006 Byron G Williams**

**Chapter 13**

**#41.00** Order to show cause why debtor's counsel should not be sanctioned for failure to appear at the confirmation hearing

Docket 32

**Tentative Ruling:**

On January 3, 2023, Byron G. Williams ("Debtor") filed a chapter 13 petition and plan. Nathan A. Berneman is Debtor's bankruptcy counsel.

On June 13, 2023, the Court held a confirmation hearing in Debtor's case. At the hearing, the Court continued the confirmation hearing to July 11, 2023 and noted it would issue an Order to Show Cause (the "OSC"), because Debtor's bankruptcy counsel did not appear at the hearing.

In response to the OSC, counsel explains that he did not appear at the hearing on June 13, 2023 as a result of a calendaring error.

If counsel appears at the continued confirmation hearing to be held on July 11, 2023, the Court will discharge the OSC.

<b>Party Information</b>
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**Debtor(s):**

Byron G Williams

Represented By  
Nathan A Berneman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:00 AM

**1:23-10289 Richard Barrett**

**Chapter 13**

**#42.00** Debtor's Objection to Claim Filed by Gulf Harbour Investments  
Corporation c/o: Specialized Loan Servicing LLC

Docket 44

**Tentative Ruling:**

In order for the respondent to have sufficient time to evaluate the status of the debtor's leasehold interest in the real property at issue and the value of the debtor's interest in that real property and to submit evidence in support of its opposition to the debtor's claim objection, the Court will continue the hearing.

The parties should be prepared to discuss an appropriate continued hearing date.

<b>Party Information</b>
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**Debtor(s):**

Richard Barrett

Represented By  
Robert S Altagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:00 AM

**1:23-10324 Lisa Fancher**

**Chapter 13**

**#43.00 Debtor's Objection to Late-Filed Proof of Claim 11 filed by Louis Mayorga**

Docket 23

**Tentative Ruling:**

Sustain.

The debtor must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
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**Debtor(s):**

Lisa Fancher

Represented By  
James R Selth

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:00 AM

**1:23-10397 Esther R Montello**

**Chapter 13**

**#44.00** Creditor Marvin Gross' Motion for Dismissal Of Chapter 13 Case  
For Cause and Objection to Confirmation Of Chapter 13 Plan

Docket 19

**Tentative Ruling:**

For the reasons discussed below, the Court concludes that the debtor's filing of the petition in this chapter 13 case was in bad faith and that the case should be dismissed.

**I. BACKGROUND**

***A. The Debtor's Schedules and Chapter 13 Plan***

On March 30, 2023, Esther R. Montello (the "Debtor") filed a chapter 13 petition. According to her petition [doc. 1], the Debtor resides at 16235 Jersey Street, Granada Hills, California (the "Jersey Street Property"). In her statement of financial affairs, the Debtor represents that she has lived at the Jersey Street Property during the three years prior to filing this bankruptcy case.

In her schedule A/B [doc. 12], the Debtor indicates that she is the owner of two real properties: the Jersey Street Property and property located at 15638 Simonds Street, Granada Hills, California (the "Simonds Street Property"). The Debtor listed the fair market value of the Jersey Street Property as \$744,507.00. The Debtor did not list a current fair market value for the Simonds Street Property.

The Debtor also has several checking accounts and a savings account. The Debtor has described one of those checking accounts as a "College Checking Account," in which she holds \$33,900.00. In the Debtor's three other checking accounts, she holds aggregate funds in the amount of \$63,000.00. As set forth in her schedules, the Debtor has other personal property, including an automobile which the Debtor owns free and clear of any liens.

In her schedule D [doc. 12], the Debtor did not list any secured claims. In her schedule E/F [doc. 12], the Debtor represents that her nonpriority unsecured debt totals



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**Chapter 13**

\$208,050.00; this includes a claim of Marvin Gross (the "Movant") in the amount of \$205,483.00. Consequently, the Movant's claim appears to constitute nearly all of the Debtor's debt.

On May 15, 2023, the Movant filed proof of claim 4-1, stating that he holds a secured claim in the amount of \$207,576.00 (the "Claim"). The Claim is secured by a deed of trust which encumbers the Jersey Street Property (the "Deed of Trust"). Based on the Debtor's schedule A, which sets forth a value of \$744,507.00 for the Jersey Street Property, her schedule D, which lists no secured claims, and her schedule J, which indicates that the Debtor has no rental or home ownership expenses for the Jersey Street Property, it appears that the Deed of Trust is the only encumbrance against the Jersey Street Property and that the Claim is fully secured.

In her chapter 13 plan (the "Plan") [doc. 13], based on her alleged net disposable income, the Debtor proposes to pay \$2,392.00 per month, over five years. The Plan represents that the Debtor has no secured debt. After the payment of the Debtor's attorney's fees and fees to the chapter 13 trustee, pursuant to the Plan, an estimated total of \$126,129.80 will be paid to the holders of claims placed in Class 5. This will pay approximately 60% of that debt, nearly all of which is owed to the Movant.

***B. Prepetition State Court Litigation***

On August 31, 2009, the Debtor and the Movant entered into an attorney-client contingency fee agreement (the "Agreement") pursuant to which the Movant agreed to represent the Debtor in a lawsuit involving the Debtor's interest in the Jersey Street Property. *Motion to Dismiss, Declaration of Marvin Gross* [doc. 19]. To secure payment of the contingency fee, the parties agreed that the Movant could record a deed of trust against the Jersey Street Property.

At the conclusion of that trial, judgment was entered in favor of the Debtor, regarding her interest in the Jersey Street Property. Under the Agreement, the Movant was entitled to 30% of the proceeds of the sale of the Jersey Street Property. *Id.* On March 18, 2010, in accordance with the Agreement, the Movant recorded the Deed of Trust against the Jersey Street Property. *Motion to Dismiss, Ex. 2.*

On May 4, 2020, after the Debtor failed to pay for the Movant's services in accordance with the Agreement, the Movant filed a lawsuit in state court against the Debtor, alleging breach of contract. On February 14, 2023, the state court issued its statement of decision in favor of the Movant. *Motion to Dismiss, Ex. 1.* In that

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**CONT... Esther R Montello**

**Chapter 13**

statement of decision, the state court found, in part, that the Debtor executed the Deed of Trust to secure her obligations under the Agreement. The state court also held that the Movant "is the lawful owner and holder of the Agreement and the beneficiary of the [D]eed of [T]rust." *Id.*

On March 7, 2023, the state court entered a judgment finding that the Debtor breached her contract with the Movant and that the Movant is entitled to specific performance under the Agreement. The judgment states that the Movant is:

entitled to equitable relief of specific performance with Esther Montello. The residential property commonly known as 16235 Jersey Street, Granada Hills, California 91344 . . . shall be immediately listed and sold for the best available price. The sale proceeds from the Jersey [Street] Property shall be distributed to Marvin Gross as follows: Thirty percent (30%) of the gross sales amount, after deduction of costs of escrow, and reasonable brokerage and/or receiver fees.

*Motion to Dismiss, Ex. 3.*

## **II. DISCUSSION**

Pursuant to 11 U.S.C. § 1307(c):

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause. . . .

In deciding whether a chapter 13 case should be dismissed or converted, courts apply a two-step analysis. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v Meyer (In re Nelson)*, 343 B.R. 671, 675 (9th Cir. B.A.P. 2006).

In addition to the enumerated causes listed in § 1307(c), a chapter 13 case filed in bad faith may be dismissed for cause under 11 U.S.C. § 1307(c). *In re Leavitt*, 171 F.3d 1219, 1224–25 (9th Cir. 1999); *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). Bad

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**Chapter 13**

faith is determined by evaluating the totality of circumstances, including the following factors: (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his chapter 13 petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor only intended to defeat state court litigation; (4) whether egregious behavior is present. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Here, there is cause to dismiss the Debtor's case. The Debtor has misrepresented facts in her schedules and has put forth a chapter 13 plan which disregards the mandatory treatment of the Claim, in accordance with 11 U.S.C. § 1322(b)(2). As reflected in the state court's judgment, entered shortly before the Debtor filed her chapter 13 petition, the Agreement is enforceable and the Deed of Trust is valid. Moreover, the the Movant has been held to be the beneficiary of the Deed of Trust. Given that the Claim is fully secured, by the Deed of Trust, against the Debtor's residence, it must be paid in full. The Claim cannot be lumped together with unsecured claims and paid in part, as set forth in the Plan.

Under the state court's statement of decision, in accordance with the Agreement, the Debtor was ordered to list and sell the Jersey Street Property for the best available price and thereafter, to pay a percentage of the sale proceeds to the Movant. Contrary to the state court order, the Debtor did not list the Jersey Street Property. Rather, the Debtor filed her chapter 13 petition and schedules, which misrepresent the nature of the Claim, and she filed the Plan, which disregards the mandatory treatment of a claim solely secured by the Debtor's residence, such as the Claim, which is secured by the Deed of Trust.

Following the filing of the Motion to Dismiss, despite the Debtor having filed amended schedules and an amended statement of financial affairs, the recent state court decision and her equity in the Jersey Street Property, the Debtor has persisted in her refusal to acknowledge the secured nature of the Claim or to put forth a chapter 13 plan which provides for her payment of the Claim, in full.

In light of the foregoing, the Court concludes that, based on the totality of the circumstances, the Debtor's filing of her chapter 13 petition was in bad faith. Accordingly, there is cause to dismiss or convert this case. Given that the Movant is by far the largest creditor of the Debtor, that the Movant is entitled to payment in full,

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**Chapter 13**

and that the Debtor has been orderered by the state court to sell the Jersey Street Property to pay the Claim, dismissal, rather than conversion, is in the best interests of creditors and the estate.

**III. CONCLUSION**

The Court will dismiss this case.

The Movant must submit the order within seven (7) days.

<b>Party Information</b>
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**Debtor(s):**

Esther R Montello

Represented By  
Leonard Pena

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:23-10397 Esther R Montello**

**Chapter 13**

**#45.00** Creditor Marvin Gross' Motion for Dismissal Of Chapter 13 Case  
For Cause and Objection to Confirmation Of Chapter 13 Plan

fr. 6/13/23

Docket 15

**\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 6/14/23. [Dkt.  
21]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Esther R Montello

Represented By  
Leonard Pena

**Movant(s):**

Marvin Gross

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**1:23-10289     Richard Barrett**

**Chapter 13**

**#46.00**     Debtor's Motion for an Order to Rescind and Remove the Lien Held by  
Gulf Harbour Investments Corporation c/o: Specialized Loan Servicing LLC  
From Title on Debtor's Property

Docket     35

**Tentative Ruling:**

See cal. no. 42.

<b>Party Information</b>
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**Debtor(s):**

Richard Barrett

Represented By  
Robert S Altagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se